



**Billing code 3410-02 P**

**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 985**

**[Doc. No. AMS-FV-12-0014; FV12-985-2 FR]**

**Marketing Order Regulating the Handling of Spearmint Oil  
Produced in the Far West; Change to Administrative Rules  
Regarding the Transfer and Storage of Excess Spearmint Oil**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule revises the administrative rules prescribed under the marketing order regulating the handling of spearmint oil produced in the Far West. The marketing order is administered locally by the Spearmint Oil Administrative Committee (Committee). This rule changes the date by which a producer must transfer excess spearmint oil to another producer, or deliver such oil to the Committee or its designees for storage, from November 1 to December 1. This rule also changes the date that the Committee must pool identified excess oil as reserve oil from November 1 to December 1. The changes are a relaxation of the handling regulations and are expected to benefit producers, handlers, and consumers.

**DATES:** Effective [INSERT DATE 30 DAYS AFTER THE DATE OF

PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Barry Broadbent, Marketing Specialist, or Gary Olson, Regional Director, Northwest Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA; Telephone: (503) 326-2724, Fax: (503) 326-7440, or E-mail: Barry.Broadbent@ams.usda.gov or GaryD.Olson@ams.usda.gov.

Small businesses may request information on complying with this regulation by contacting Laurel May, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Laurel.May@ams.usda.gov.

**SUPPLEMENTARY INFORMATION:** This final rule is issued under Marketing Order No. 985 (7 CFR part 985), as amended, regulating the handling of spearmint oil produced in the Far West (Washington, Idaho, Oregon, and designated parts of Nevada and Utah), hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This final rule revises the administrative rules prescribed under the order. This rule changes the date by which a producer must transfer excess spearmint oil to another producer, or deliver such oil to the Committee or its designees for storage, from November 1 to December 1.

This rule also changes the date that the Committee must pool identified excess oil as reserve oil from November 1 to December 1. The changes were unanimously recommended at a February 22, 2012, meeting of the full Committee.

Section 985.56(a) of the spearmint order specifies that before October 15, or such other date as the Committee with the approval of the Secretary may establish, a producer, following notification of the Committee, may transfer excess oil to another producer to fill a deficiency in that producer's annual allotment. In addition, § 985.56(b) specifies that before November 1, or such other date as the Committee with the approval of the Secretary may establish, excess oil not used to fill another producer's deficiency shall be delivered to the Committee or its designees for storage. Section 985.57(a) provides that on November 1, or such other date as the Committee with the approval of the Secretary may establish, the Committee shall pool identified excess oil as reserve oil in such manner as to accurately account for its receipt, storage, and disposition.

In a rule published on October 30, 1980 (45 FR 71759), § 985.156 was added to the order's administrative rules and regulations, effectively changing the date by which the

transfer of excess oil between producers to fill deficiencies must be completed from October 15 to November 1.

At the February 22, 2012, meeting, the Committee unanimously recommended changing the date by which all transfers of excess oil between producers, to fill deficiencies, must be completed from November 1 to December 1. In addition, the Committee recommended changing the date by which all excess oil not used to fill another producer's deficiency must be delivered to the Committee or its designees for storage from November 1 to December 1. Lastly, the Committee recommended changing the date that the Committee must pool identified excess oil as reserve oil from November 1 to December 1.

In its deliberations, the Committee commented that a number of factors have contributed to the need to establish later dates for the transfer, storage, and reserve pooling of excess oil. The largest factor driving the recommended change is the shift towards harvesting spearmint oil later in the year. Historically, the harvest of spearmint oil has concluded by the end of September. However, in recent years, many producers have extended the harvest of spearmint oil into the middle of October. This current

trend towards harvesting later into the year has been facilitated by advances in the equipment, technology, and cultural practices employed by spearmint producers. While extending harvest further into October has benefited producers, it has also made the identification and transfer of excess oil prior to the current November 1 deadline increasingly difficult.

In addition, after harvest is complete, many producers now deliver their spearmint to a handler to remove excess water from the spearmint oil in order to derive a "dewatered" net quantity of oil produced. This dewatering process can take up to several weeks to complete, further tightening the timeframe that spearmint producers must operate under to meet the current volume regulation deadlines.

Lastly, many spearmint oil producers have diversified their farming operations and are typically involved in the harvest of other late-bearing crops during the month of October. These producers may be preoccupied with their other farm obligations and may not have the time to review their spearmint production, ensure all paperwork is in order, make marketing decisions, and execute any transfers of excess oil prior to the current November 1 deadline.

The Committee staff must account for all of the production, transfer, sale, and reserve pooling of spearmint oil before an accurate determination of the statistics can be compiled for the marketing year. The Committee believes that extending the deadline by which producers must transfer or store their excess oil, and that the Committee must pool identified excess oil, from November 1 to December 1 will have minimal impact on the Committee staff's ability to perform their required functions in a timely manner.

The changes are expected to benefit producers, handlers, and consumers of spearmint oil by ensuring that all spearmint oil eligible to enter the market under volume regulation is actually available to the market.

#### **Final Regulatory Flexibility Analysis**

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately

burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are 8 spearmint oil handlers subject to regulation under the order. In addition, there are approximately 32 producers of Scotch spearmint oil and approximately 88 producers of Native spearmint oil in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (SBA) as those having annual receipts of less than \$7,000,000, and small agricultural producers are defined as those having annual receipts of less than \$750,000. (13 CFR 121.201)

Based on the SBA's definition of small entities, the Committee estimates that two of the eight handlers regulated by the order could be considered small entities. Most of the handlers are large corporations involved in the international trading of essential oils and the products of essential oils. In addition, the Committee estimates that 15 of the 32 Scotch spearmint oil producers and 26 of the 88 Native spearmint oil producers could be classified as small entities under the SBA definition. Thus, a majority



of handlers and producers of Far West spearmint oil may not be classified as small entities.

The Far West spearmint oil industry is characterized by producers whose farming operations generally involve more than one commodity and whose income from farming operations is not exclusively dependent on the production of spearmint oil. A typical spearmint oil-producing operation has enough acreage for rotation such that the total acreage required to produce the crop is about one-third spearmint and two-thirds rotational crops. Thus, the typical spearmint oil producer has to have considerably more acreage than is planted to spearmint during any given season. Crop rotation is an essential cultural practice in the production of spearmint oil for weed, insect, and disease control. To remain economically viable with the added costs associated with spearmint oil production, most spearmint oil-producing farms fall into the SBA category of large businesses.

Small spearmint oil producers generally are not as extensively diversified as larger ones and as such are more at risk to market fluctuations. Such small producers generally need to market their entire annual crop and do not have the luxury of having other crops to cushion

seasons with poor spearmint oil returns. Conversely, large diversified producers have the potential to endure one or more seasons of poor spearmint oil markets because income from alternate crops could support the operation for a period of time. Being reasonably assured of a stable price and market provides small producing entities with the ability to maintain proper cash flow and to meet annual expenses. Thus, the market and price stability provided by the order potentially benefit the small producer more than such provisions benefit large producers.

This final rule changes the date by which transfers of excess spearmint oil between producers to fill deficiencies in annual allotments must be completed from November 1 to December 1. This rule also changes the date by which all excess oil not used to fill deficiencies must be transferred to the Committee for storage from November 1 to December 1. Lastly, this rule extends the date that the Committee must pool identified excess oil as reserve oil from November 1 to December 1.

The Committee recommended extending the dates to give producers more time to assess the quantity of spearmint oil they produced relative to their annual allotment, to determine if there is a deficiency or an excess of such

oil, and to make decisions regarding any transfers of oil. This action is expected to benefit producers, handlers, and consumers by ensuring that the market is adequately supplied with spearmint oil. The authority for this action is provided in §§ 985.56 and 985.57 of the order.

At the February 22, 2012, meeting, the Committee discussed the impact of these changes on handlers and producers. This action is a relaxation of the current handling regulation, allowing an additional 30 days for industry participants to fully supply the market with the total amount of spearmint oil allotted under the volume regulation provisions of the order. The benefits of this rule are not expected to be disproportionately greater or less for small handlers or producers than for larger entities.

The Committee discussed alternatives to these changes, including making no changes at all, changing the dates but keeping them within the month of November, and extending the dates further into December or into January. The Committee thought that maintaining the dates in the current regulations would not be responsive to the changing production practices of the industry. In addition, they felt that the dates should be extended at least 30 days for

the change to be meaningful. However, the Committee believed that extending the dates any further than the proposed dates would affect the Committee's ability to establish accurate reports for the completed harvest season in a timely manner. The Committee members unanimously agreed that changing the dates for transferring, storing, and pooling excess oil from November 1 to December 1 addresses the industry's current needs without negatively impacting the operation of the Committee.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581-0178, Vegetable and Specialty Crops. No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This final rule changes the date by which excess oil must be transferred between producers to fill annual allotment deficiencies or delivered to the Committee or its designees for storage from November 1 to December 1. In addition, the rule changes the date the Committee must pool identified excess oil as reserve oil from November 1 to

December 1. This rule is a relaxation of the volume regulation provisions of the order. Accordingly, this rule does not impose any additional reporting or recordkeeping requirements on either small or large spearmint oil producers or handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. Furthermore, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

In addition, the Committee's meeting was widely publicized throughout the spearmint oil industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the February 22, 2012, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

A proposed rule concerning this action was published in the **Federal Register** on September 17, 2012 (77 FR 57037). Copies of the rule were provided to the Committee, which in turn made it available to all Far West spearmint oil producers, handlers, and interested persons. Finally, the rule was made available through the Internet by USDA and the Office of the Federal Register. A 60-day comment period ending November 16, 2012, was provided to allow interested persons to respond to the proposal.

Two comments were received during the comment period in response to the proposal. One of the comments was in support of the proposed changes, while the other was not substantive in nature and did not address the merits of the proposal. The commenter in support of the action believes that the proposed changes would be beneficial to the industry and would facilitate the orderly marketing of spearmint oil. Accordingly, no changes will be made to the rule, as proposed, based on the comments received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at:  
[www.ams.usda.gov/MarketingOrdersSmallBusinessGuide](http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide). Any questions about the compliance guide should be sent to

Laurel May at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

**List of Subjects in 7 CFR Part 985**

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

For the reasons set forth in the preamble, 7 CFR part 985 is amended as follows:

**PART 985 - MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST**

1. The authority citation for 7 CFR part 985 continues to read as follows:

**Authority:** 7 U.S.C. 601-674.

2. Revise § 985.156 to read as follows:

**§ 985.156 Transfer of excess oil by producers.**

(a) Pursuant to § 985.56(a), before December 1 of each marketing year, a producer, following notification of the Committee, may transfer excess oil to another producer to

enable that producer to fill a deficiency in that producer's annual allotment.

(b) Pursuant to § 985.56(b), before December 1 of each marketing year, excess oil not used to fill another producer's deficiency shall be delivered to the Committee or its designees for storage.

3. Add § 985.157 to read as follows:

**§ 985.157 Reserve pool requirements**

Pursuant to § 985.57(a), on December 1, the Committee shall pool identified excess oil as reserve oil in such manner as to accurately account for its receipt, storage, and disposition.

Dated: February 5, 2013

David R. Shipman  
Administrator  
Agricultural Marketing Service

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